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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,870	07/14/2000	Wallace J. Beaudry	8115-12394A-PCT US DIV2	6042

7590                      03/26/2002  
Ryan Kromholz & Manion SC  
P O Box 26618  
Milwaukee, WI 53226-0618

EXAMINER

LEWIS, KIM M

ART UNIT                      PAPER NUMBER

3761

DATE MAILED: 03/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No. 09/616,870	Applicant(s) BEAUDRY, WALLACE J.	
Examiner Kim M. Lewis	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 04 January 2002 and 14 January 2002.
- 2a)  This action is FINAL.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 26,32-40,42-54 and 104-124 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 33-35,43-46,51-54 and 106-117 is/are allowed.
- 6)  Claim(s) 26,32,36-40,47,49,50,104,105 and 118-124 is/are rejected.
- 7)  Claim(s) 48 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 21.
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: *Detailed Action*.

**DETAILED ACTION**

***Continued Prosecution Application***

1. The request filed on 1/4/02 for a RCE under 37 CFR 1.114 based on parent Application No. 09/616870 is acceptable and a RCE has been established. An action on the RCE follows.

***Response to Amendment***

2. The amendment filed on 1/14/02 has been received and made of record in the application file wrapper. The specification and claims have been amended as requested.

***Claim Objections***

3. Applicant is advised that should claim 118 be found allowable, claim 123 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 26, 104 and 118 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,116,675 ("Nash-Morgan").

As regards claims 26 and 118, Nash-Morgan discloses all features of the claim including first and third sections (adhesive strips 26), a second elastic section (central elastic sheet 24) and first and second margins (Fig. 3). The applicant should note that although the first, second and third sections are distinct; they are joined together so as to constitute a one-piece construction.

As regards claim 104, (24) is a web of planar material.

6. Claims 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,534,010 ("Peterson"). As regards claim 36, Peterson discloses all features of the claim including first, second and third elastic sections and 1<sup>st</sup> and 2<sup>nd</sup> margins. Note the marked-up front page of the Peterson reference attached hereto. Also note col. 3, lines 56-34. The applicant should note that although the first, second and third sections are distinct; they are joined together so as to constitute a one-piece construction.

7. As regards claims 37-40, note the openings in the second section, which are of a predetermined shape, size, and are spatially oriented (Fig. 1).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 32 and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nash-Morgan. As regards claim 32, Nash-Morgan substantially discloses all features of the claim except that the first and third sections are laminated materials comprising first, second and third layers. Absent a critical teaching and/or a showing of unexpected results derived from constructing the first and third sections from a laminated material comprising three layers, the examiner contends that the use of such a laminated material for the first and third sections is an obvious design choice, which does not patentably distinguish applicant's invention.

As regards claim 105, Nash-Morgan fails to teach the second section is latex rubber. Absent a critical teaching and/or a showing of unexpected results, the examiner

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contends that constructing the second section from a web of latex rubber is an obvious design choice, which does not patentably distinguish applicant's invention.

11. Claims 42, 47, 49 and 118-124 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson. As regards claim 42, Peterson fails to teach the second section comprises a laminated material comprising three layers. Absent a critical teaching and/or a showing of unexpected results derived from constructing the first and third sections from a laminated material comprising three layers, the examiner contends that the use of such a laminated material for the first and third sections is an obvious design choice, which does not patentably distinguish applicant's invention.

As regards claim 47, Peterson is silent as to the transparency of the first and second sections. However, the examiner contends that one having ordinary skill in the art would have found it within the level of ordinary skill in the art to provide the first and third sections (adhesive tape sections 24 and 26) in transparent form since it is well known in the art that adhesive tape is manufactured in transparent form. Such a modification requires limited skill in the art.

As regards claim 49, the second section includes a first side and a second side, of which the second side contacts a wound (Fig. 5).

As regards claim 118, 123 and 124, note the rejection of claims 36 and 42, *supra*.

As regards claims 119-122, note the rejection of claims 37-40 *supra*.

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12. Claims 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of U.S. Patent No. 5,234,462 ("Pavletic"). As regards claim 50, Peterson fails to disclose that the second section comprises a medicinal material.

Pavletic, however, discloses a wound closure device having a second section used with or without a dressing for application to a wound site. Although Pavletic fails to teach a medicinal material applied to the wound dressing, one having ordinary skill in the art would have been motivated to apply a medicinal material to the dressing in order to treat the wound site. Such a modification requires only routine skill in the art.

In view of Pavletic, it would have been obvious to one having ordinary skill in the art to provide the wound closure device of Peterson with a dressing having a medicinal material applied thereto in order to treat the wound site. Such a dressing would be applied underneath the second section and would therefore be a part of the second section.

As regards claims 52-54, the examiner contends that the use of any medicinal material including zinc chromate impregnated in a hydrocolloid material, calcium alginate or sodium alginate would have been within the skill of the art.

***Allowable Subject Matter***

13. The indicated allowability of claims 36-40, 42,47-50,104 and 105 is withdrawn in view of the newly discovered reference(s) to Nash-Morgan, as well as the new rejections in view of Peterson and Peterson in view of Pavletic. Rejections based on the newly cited reference appear above.

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14. Claims 33-35, 44-46, 51-54 and 106-117 are allowed.

15. Claim 48 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703.308.2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.3590 for regular communications and 703.305.3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.



**Kim M. Lewis**  
**Primary Examiner**  
**Art Unit 3761**

kml  
March 25, 2002





US005534010A

**United States Patent** [19]  
**Peterson**

[11] **Patent Number:** **5,534,010**  
[45] **Date of Patent:** **\*Jul. 9, 1996**

[54] **CLOSURE FOR A SKIN WOUND OR INCISION**

4,423,731 1/1994 Roomi ..... 606/215

**FOREIGN PATENT DOCUMENTS**

[76] **Inventor:** **Meldon L. Peterson, 912 SW. 11th St. #1, Newport, Oreg. 97365**

0551713 6/1932 Germany .  
0578512 6/1933 Germany .  
1903085 9/1969 Germany .

[\*] **Notice:** The term of this patent shall not extend beyond the expiration date of Pat. No. 5,176,7030.

*Primary Examiner*—Gary Jackson  
*Attorney, Agent, or Firm*—Marger, Johnson, McCollom & Stolowitz

[21] **Appl. No.:** **302,711**

[22] **PCT Filed:** **Oct. 29, 1992**

[86] **PCT No.:** **PCT/US92/09246**

§ 371 Date: **Apr. 29, 1994**

§ 102(e) Date: **Apr. 29, 1994**

[87] **PCT Pub. No.:** **WO93/08748**

**PCT Pub. Date: May 13, 1993**

[57] **ABSTRACT**

A sutureless closure for a skin wound or incision, which includes first and second strips of adhesive tape adapted to adhere to skin adjacent either side of the wound. A third strip of adhesive tape is provided to adhere to the upper exposed surface of the first strip of tape. A plurality of filaments are secured between the ends of the first and third strips of tape, with the filaments being slidably received over structure defined on the second strip. Also provided are means for frictionally engaging the skin closely adjacent the opposing ends of the first and second tapes so that tension in the filament draws tissue the engaging means into a slight mound. A protective strip covers the adhesive on the first and third strips with the protective strip including a pair of transfer creases to permit each of the adhesive strips of tape which the protective strip covers to be covered by the same side of the strip.

[51] **Int. Cl.<sup>6</sup>** ..... **A61B 17/04**

[52] **U.S. Cl.** ..... **606/215; 606/216**

[58] **Field of Search** ..... **606/213-216**

[56] **References Cited**

**U.S. PATENT DOCUMENTS**

2,196,296 4/1940 Flynn ..... 606/215  
2,752,921 7/1956 Fink ..... 606/215

**10 Claims, 4 Drawing Sheets**

